



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Expertware, Inc.

File: B-231629

Date: July 13, 1988

DIGEST

1. Since the Small Business Administration has conclusive authority to determine small business status for federal procurement purposes, the General Accounting Office does not consider size status protests.

2. Protest against amendment repealing solicitation's small business recertification requirement is dismissed as academic where the Small Business Administration has found that proposed awardee is a small business and no immediate purpose would be served by our review of the matter.

DECISION

Expertware, Inc., protests the proposed award of a contract to Advanced Digital Systems, Inc. (ADS) under request for proposals (RFP) No. N66001-86-R-0411, issued by the Navy as a total small business set-aside for a software quality assurance program. Expertware specifically protests the propriety of a solicitation amendment which repealed a previous amendment's requirement for small business recertification.

We dismiss the protest.

Expertware essentially contends that since the proposed awardee, ADS, was acquired by a large business, Titan Corporation, Inc., after the time of its self-certification and prior to the time it submitted its revised proposal, ADS is now a large business which may not be awarded the contract under a 100-percent small business set-aside. Expertware alleges that the contracting officer should have been aware at the time of the repeal of the recertification requirement that the small business size status of ADS was questionable, and therefore, should have required new representations and certifications. ADS claims that the

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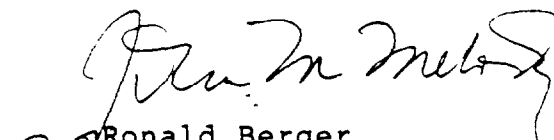
Navy's rescission of the recertification request indicates its favoritism toward a large business.

To the extent that Expertware protests the proposed award to ADS on the basis of its size status, we note that under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration (SBA) is empowered to conclusively determine matters of small business size status for federal procurement purposes and, therefore, the General Accounting Office does not consider size status protests. See, e.g., Newgard Industries, Inc.--Reconsideration, B-226272.2, Apr. 17, 1987, 87-1 CPD ¶ 422.

Furthermore, as to Expertware's contention that recertification by ADS should have been required due to its allegedly questionable size status, we find that no useful purpose would be served by our consideration of this allegation. The SBA has recently held that ADS is in fact a small business for this procurement based on its initial self-certification. The SBA stated that size is properly determined on the date of a firm's self-certification. Since the SBA's size determination of ADS as a small business is conclusive, we will not consider the matter.

Expertware requests reimbursement of its protest costs. We note that our authority to allow the recovery of the costs claimed by Expertware is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract does not comply with a statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. IV 1986). Since the protest is dismissed, we make no such determination here and therefore there is no basis for award of costs. Interstate Diesel Service, Inc., B-229610, B-229816, Feb. 17, 1988, 88-1 CPD ¶ 162.

The protest is dismissed.


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